



Spending Your HEERF I, HEERF II, and HEERF III Grant Dollars

Post-secondary institutions of higher learning are now receiving funds allocated by the series of three Coronavirus-related stimulus bills enacted by the U.S. Congress in 2020 and 2021:

- ☉ [The Coronavirus Aid, Relief, and Economic Security Act \(CARES\)](#),
- ☉ [The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 \(CRRSAA\)](#), and
- ☉ [The American Rescue Plan Act of 2021 \(ARP\)](#)

These three pieces of legislation combined allocate more than \$74 billion to support post-secondary higher institutions of learning through the creation of Higher Education Emergency Relief (**HEERF**) Fund I (CARES), HEERF Fund II (CRRSAA), and HEERF III (ARP), collectively the “**HEERF Funds**”.

The web of underlying legislation, legislation incorporated by reference, and relevant guidance surrounding the utilization of HEERF Funds is complex and often confusing. The purpose of this document is to provide clarity citing source documents regarding two critical considerations facing HEERF Funds recipients:

1. Whether HEERF Funds recipients are authorized to expend HEERF Funds through intergovernmental or “cooperative” agreements, and
2. What guidance applies to both the i) procurement of contracts through which recipients will spend HEERF Funds, whether those contracts are procured by the recipients themselves or by another public agency, and ii) requirements relating to the recipients’ actual expenditure of HEERF Funds.

The Eligibility of Equalis Group Intergovernmental Agreements

A frequent question is whether HEERF Funds dollars can be spent through intergovernmental agreements, such as the portfolio of publicly procured, competitively solicited [Equalis Group Master Agreements](#).

The short answer is: **Yes**.

Spending HEERF Funds in Compliance with Federal Requirements

Pursuant to the provisions of HEERF Funds I, II and III, the U.S. Department of Education awards grants to Institutions of Higher Education (**IHEs**) for the express purpose of providing these IHEs with emergency relief funds to address the historical and ongoing impacts of COVID-19.

The spending of HEERF Funds dollars awarded by the U.S. Department of Education to IHEs must comply with contract procurement requirements contained within both [2 CFR Part 200](#) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (**Uniform Guidance**), and also the [Education Department’s General Administrative Regulations \(EDGAR\)](#).

Under Uniform Guidance and EDGAR, the use of state and local intergovernmental agreements and inter-entity agreements is explicitly encouraged for non-federal entities receiving federal awards, such as state and local governments, in [2-CFR § 200.318\(e\)](#), which states:

*“To foster greater economy and efficiency, and in accordance with efforts to promote cost effective use of shared services across the Federal Government, **the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services** [emphasis added]. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.”*



Equalis Group Lead Agency Conformity with Federal Procurement & Contracting Requirements

Equalis Group Master Agreements are publicly procured contracts sourced by local governmental agencies and education service centers (**Lead Agencies**) in conformity with the regulatory requirements established for non-federal entities in Uniform Guidance and EDGAR. These Master Agreements are made available to public agencies across the country through intergovernmental agreements as authorized by Uniform Guidance and EDGAR.

Equalis Group Master Agreements are immediately available to existing Equalis Group members. Any public sector entity in the country can [join](#) Equalis Group and begin utilizing any Equalis Group already-procured, competitively solicited Master Agreement by completing the [Equalis Group Master Intergovernmental Cooperative Purchasing Agreement](#) in accordance with Uniform Guidance and EDGAR stipulations.

Equalis Group strongly encourages each agency to conduct its own due diligence when expending federal funds. To assist in this process, Equalis Group has provided in the following pages several citations from federal publications pertaining to the procurement and expenditure-related compliance requirements to which HEERF Fund recipients must adhere. These publications validate the viability of leveraging Equalis Group Master Agreements, as the Equalis Group Lead Agency procurement processes adhere to the contract procurement requirements of Uniform Guidance and EDGAR.

Note: Equalis Group Master Agreements are cooperative agreements made available through an intergovernmental agreement established between Equalis Group Lead Agencies and an individual public agency that joins Equalis Group. Equalis Group Master Agreements are NOT state term contracts or state purchasing pools, many of which are not established in compliance with Uniform Guidance requirements.

Who is Eligible to Receive HEERF Fund Awards?

An “**Institution of Higher Education**” is defined in [20 U.S. Code § 1002 \(a\)](#) as an educational institution in any State that -

- (1) *admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of [section 1091\(d\)](#) of this title;*
- (2) *is legally authorized within such State to provide a program of education beyond secondary education;*
- (3) *provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the [Secretary](#);*
- (4) *is a public or other [nonprofit](#) institution; and*
- (5) *is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary...*

Legal Disclaimer

Please keep in mind that this information is not intended to provide advice on any specific legal matter or professional service to any Equalis Group member, supplier partner, or other person or entity. It is designed only to provide general information. This document is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion. Equalis Group and its members are not attorneys and are not responsible for any legal advice and the information and opinions presented should not be used or referred to as primary legal sources. **This is not a substitute for the advice of an attorney.**

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Equalis Group encourages political subdivisions, units of local government, state agencies, other public agencies, and supplier partners to have appropriate legal counsel review the applicable articles under State Statutes to determine their eligibility to utilize Equalis Group's competitively solicited contracts.



Contract Procurement & Expenditure Compliance Guidance: Source Text Citations

Several published documents have been made publicly available for review to assist recipients of HEERF Funds under HEERF I, HEERF II, and HEERF III in expending these funds in a compliant manner. A review of documentation published by the U.S. Department of Education (**USDOE**) establishes that HEERF Fund award recipients are mandated to procure goods and services in a manner that is expeditious, transparent, and in full compliance with [2-CFR Part 200](#) and [EDGAR](#).

U.S. Department of Education: Frequently Asked Questions

Source Document:	Higher Education Emergency Relief (HEERF) Round 3 Frequently Asked Questions
Published By:	U.S. Department of Education
Publication Date:	October 2, 2020; updated November 20, 2020

The USDOE released this frequently asked questions document to provide clarity around HEERF I Funds, acceptable uses of those funds, funding mechanics, and compliance requirements to which all HEERF Funds award recipients must adhere. In direct response to the question of Uniform Guidance applicability on page four of this publication, the USDOE explicitly answers this important question:

8. Question: Do all of the requirements in the [Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards](#) (the “Uniform Guidance,” at 2 CFR part 200) apply to the HEERF grants?

Answer: Yes. The Department has consistently held that grant funds awarded under the HEERF are subject to the requirements of the Uniform Guidance in [2 CFR part 200](#). Notice of the applicability of these provisions was provided in the Certification and Agreement documents that all grantees affirmatively signed prior to submitting their requests for funding, as well as in each Grant Award Notice (GAN).

U.S. Department of Education: Certification and Agreement for Funding

Source Document:	Recipient’s Funding Certification and Agreement for the Institutional Portion of the Higher Education Emergency Relief Fund Formula Grants Authorized by Section 18004(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act
Published By:	U.S. Department of Education
Publication Date:	2020

The U.S. Department of Education published the certification and agreement document to which all HEERF Recipients were required to attest prior to accessing HEERF I dollars. **Attachment A to Recipient’s CARES Funding Certification and Agreement** on page four required all HEERF recipients to assure and certify compliance to several provisions, including strict adherence to Uniform Guidance and EDGAR:

Recipient will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts [75](#), [77](#), [79](#), [81](#), [82](#), [84](#), [86](#), [97](#), [98](#), and [99](#); the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in [2 CFR part 180](#), as adopted and amended as regulations of the Department in [2 CFR part 3485](#); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in [2 CFR part 200](#), as adopted and amended as regulations of the Department in [2 CFR part 3474](#).

U.S. Department of Education: Frequently Asked Questions

Source Document:	Higher Education Emergency Relief Fund III Frequently Asked Questions
Published By:	U.S. Department of Education
Publication Date:	May 11, 2011; updated on May 24, 2021 and September 30, 2021

The USDOE released this frequently asked questions document to provide clarity around HEERF III Funds, acceptable uses of those funds, funding mechanics, and compliance requirements to which all HEERF Funds award recipients must adhere. On page 13 of this publication, USDOE provides compliance guidance to HEERF recipients, specifically referencing Uniform Guidance:

As with most Federal grants, grantees must also comply with the Cost Principles contained in the [2 CFR part 200 subpart E](#) of the Uniform Guidance. Some examples of costs specifically prohibited under the Uniform Guidance include using grant funds for lobbying, bad debts, or purchasing goods or services for personal use.

U.S. Department of Education: Federal Register Notice

Source Document:	Federal Register / Vol. 86, No. 145 / Notice Inviting Applications for Funds Under the Higher Education Emergency Relief Fund (HEERF), Section 2003 of the American Rescue Plan (ARP) for Institutions of Higher Education That Meet the Criteria for the Minority Serving Institutions (MSIs) Program
Published By:	Office of Postsecondary Education, U.S. Department of Education
Publication Date:	August 2, 2021

The USDOE released this Federal Register notice pertaining to the institutional eligibility of HEERF Funds, acceptable use of funds, and mandated compliance requirements to which all HEERF recipients must adhere. Under “Applicable Law” on Federal Register page 41458, USDOE requires compliance with Uniform Guidance and EDGAR, amongst others:

18. Recipient must comply with all applicable assurances in OMB Standard Forms (SF) [SF-424B](#) and [SF-424D](#) (Assurances for Non-Construction and Assurances for Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; nondiscrimination; Hatch Act provisions; labor standards; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders, and regulations.

19. Recipient certifies that with respect to the certification regarding lobbying in [Department Form 80-0013](#), no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or supplementing of Federal grants under this program; Recipient must complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” when required ([34 CFR part 82, Appendix B](#)).

20. Recipient must comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts [75](#), [77](#), [81](#), [82](#), [84](#), [86](#), [97](#), [98](#), and [99](#); the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in [2 CFR part 180](#), as adopted and amended as regulations of the Department in [2 CFR part 3485](#); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in [2 CFR part 200](#), as adopted and amended as regulations of the Department in [2 CFR part 3474](#).